

RETURN OF SERVICE

*Service of the Summons and Complaint was made by me ¹	DATE May 2, 2007 at 3:40 p.m.
NAME OF SERVER (PRINT) Ontry Patten	TITLE Process Server
<i>Check one box below to indicate appropriate method of service</i>	
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____	
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____	
<input type="checkbox"/> Returned unexecuted: _____	
<input checked="" type="checkbox"/> Other (specify): Service on Earth Biofuels, Inc., was effectuated by personally serving Cory Steele, Managing Agent duly authorized to accept service. Service was made at Capitol Services, Registered Agent, 615 S. DuPont Highway, Dover, DE 19901.	

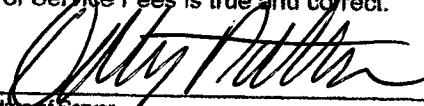
STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on May 2, 2007
Date


Signature of Server

c/o Court Support, Inc.
1891 Hillside Avenue

Address of Server

Williston Park, NY 11596

* Also Served:

Rule 7.1 Statement; Individual Practices of Magistrate Judge Maas; Individual Practices of Kenneth M. Karas; and Civil Cover Sheet

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

AFFIDAVIT OF SERVICE**UNITED STATES DISTRICT COURT**
Southern District of New York

Index Number: 07 CV 3434

Date Filed: 4/30/2007

Plaintiff:

EXCALIBUR LIMITED PARTNERSHIP and WHALEHAVEN CAPITAL FUND LTD.,

vs.

Defendant:

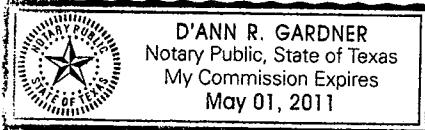
EARTH BIOFUELS, INC.,

For:

Herrick, Feinstein LLP
Two Park Avenue
New York, NY 10016Received these papers to be served on **EARTH BIOFUELS** located at **3001 Knox Street, Suite 403, Dallas, Texas 75205**.I, Gary Thornton, being duly sworn, depose and say that on the **1st day of May, 2007 at 3:15 pm**, I:Personally served Earth Biofuels, by delivering a true copy of the **Summons in a Civil Case, Complaint, Civil Cover Sheet, Rule 7.1 Statement, Individual Practices of Kenneth M. Karas, Individual Practices of Magistrate Judge Maas** to Tommy Foltz, President, as authorized to accept on behalf of the above named Entity.**Description of Person Served:** Age: 35, Sex: M, Race/Skin Color: Caucasian, Height: 6'0", Weight: 180, Hair: Blondish, Glasses: N

I am over the age of 18, am not a party in the above action, and am a Certified Process Server, in good standing, in the jurisdiction in which the process was served.

Subscribed and Sworn to before me on the 2nd day of May, 2007 by the affiant who is personally known to me.

D'Ann R. Gardner

Gary Thornton
Gary Thornton
Process Server

Our Job Serial Number: 2007001846
Ref: 07 CV 3434

United States District Court

SOUTHERNDISTRICT OF

NEW YORKEXCALIBUR LIMITED PARTNERSHIP
and WHALEHAVEN CAPITAL FUND LTD.,

Plaintiffs,

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

EARTH BIOFUELS, INC.,

Defendant.

07 CV 3434**JUDGE KARAS**TO: (Name and address of defendant)
EARTH BIOFUELS, INC.
3001 Knox Street, Suite 403
Dallas, Texas 75205YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)
HERRICK, FEINSTEIN LLP, 2 Park Avenue, New York, New York 10016

an answer to the complaint which is herewith served upon you, within THIRTY (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

(BY) DEPUTY CLERK

DATEAPR 30 2007